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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

TAVERN ON THE GREEN  
LIMITED PARTNERSHIP, et al.,

Chapter 11

Case No. 09-15450-ALG

Debtors.

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**STATEMENT OF ARROW PRODUCE IN RESPONSE TO DEBTORS' MOTION TO  
APPROVE SETTLEMENT AND COMPROMISE AMONG THE DEBTORS AND P&N  
BAKERY, LLC AND TO ASSUME CONTRACT OF SALE**

Arrow Produce, a Division of Krystal Fruits & Vegetables (Krystal"), by its attorneys LaMonica Herbst & Maniscalco, LLP ("LH&M"), as and for its response (the "Response") to the Debtors' Omnibus Motion to Approve Settlement and Compromise Among Tavern On The Green, L.P., Leroy Adventures, Inc., and P&N Bakery, LLC; and to Assume Contract of Sale ("Motion"), respectfully sets forth and represents as follows:

1. Arrow Produce, a Division of Krystal Fruits & Vegetables ("Krystal") was and still is a corporation organized and existing pursuant to the laws of the State of New York and maintains its principal place of business at 461 Railroad Avenue, Westbury, New York 11590. Krystal is engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities ("produce") in interstate commerce.

2. Tavern On The Green ("TOTG" or "Debtor") and Leroy Adventures, Inc., ("Leroy" or "Debtor") (collectively "Debtors") respectively, filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on September 9, 2009 (the "Petition Date"). The Debtors have remained in possession of their assets and manage their affairs as debtors-in-possession under §§1107 and 1108 of the Bankruptcy Code.

3. Prior to the Petition Date, TOTG and Krystal entered into a contract whereby

Krystal agreed to supply and TOTG agreed to purchase and pay for certain fresh produce products supplied to TOTG. TOTG is obligated to pay for the goods and services.

4. During the course of its relationship, Krystal delivered to TOTG at least three (3) times a week, fresh produce products including fresh juice, which TOTG used for resale to its customers. The product delivered is covered under the Perishable Agricultural Commodities Act (“PACA”) and protected as a trust. *See* 7 U.S.C. § 499 *et seq.* Based upon our research, it appears that TOTG never protected that trust and failed to preserve the trust assets for the benefit of Krystal. Krystal is owed the total sum of Sixty-two thousand two hundred sixty-five and 62/100 (\$62,265.62) dollars, plus interest and attorney’s fees as authorized under its invoice terms. As of the date hereof, Krystal has not been paid anything on its PACA trust fund claim.

5. Despite the communications between counsel for TOTG and counsel for Krystal wherein the Debtor has acknowledged Krystal’s status as a PACA trust creditor, and Krystal has repeatedly requested that the outstanding invoices be paid, Krystal has not received any payments, adequate protection or otherwise.

6. Krystal commenced an Adversary Proceeding, 09-1899-ALG, which is returnable before this Court on January 12, 2010 which seeks this Court’s intervention to order the immediate payment of \$62,265.62, plus interest and attorney’s fees from TOTG and an accounting from TOTG as to the disposition of Krystal’s PACA trust funds as Krystal has not received any payments.

7. By this Motion, the Debtors seeks, *inter alia*, Court authorization for an assumption of a contract and approval of a sale of a warehouse located at 38-40, 38-66 and 38-68 10<sup>th</sup> Street, Long Island City, New York (the “Warehouse”) to P&N Bakery, LLC (the “Purchaser”). The Motion sets forth a cash purchase price in the amount of \$3,500,000.00. A footnote in the Motion indicates that TD Bank, N.A. (“TD Bank”), has a first security position on the net proceeds from the sale of the Warehouse. Additionally, the Motion provides for the payment of certain PACA claims in the approximate amount of \$150,000.00. As previously stated, Krystal’s total PACA claim is \$62,265.62, plus interest and attorney’s fees.

8. Unfortunately, the Motion as filed, is devoid of any reference to the total amount of TD Banks's claim which is contemplated to be paid at closing. Moreover, the Motion lacks sale details concerning exactly what, to whom and how much is to be paid from the proceeds of sale. At a minimum, this financial information would include payments on the PACA claims, payments to the taxing authorities, and other costs incident to the closing.

9. To the extent that there are sufficient proceeds of sale to pay Krystal in full, immediately upon closing, on its total Outstanding Krystal Invoices, then Krystal has no objection to the Motion. However, any supplemental pleadings seeking Court authorization of a sale which does not propose to pay Krystal's PACA claim in full should be denied.

10. It is equally important to note that the PACA trust fund liability extends to all principals and owners of TOTG and Krystal reserves its right to pursue claims against those individuals in the event it is not paid by TOTG.

11. Certainly more than three (3) months have elapsed since TOTG filed for bankruptcy protection. Upon information and belief, TOTG has been operating in its final days as the "world famous landmark" restaurant and arguably receiving a profit on its services as a restaurant and banquet facility. Krystal remains a PACA trust claimant who has not received any payments on its Outstanding Krystal Invoices and Krystal is entitled to be paid in full.

Dated: December 16, 2009  
Wantagh, New York

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